

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

and

STATE OF MISSOURI,

Plaintiffs,

vs.

CITY OF LEBANON, MISSOURI

Defendant,

Civil Action No.

**COMPLAINT**

The United States of America (“United States”), by authority of the Attorney General of the United States and through the undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Missouri, acting by the authority of the Attorney General of Missouri and through its undersigned counsel, and acting at the request and on behalf of the Missouri Department of Natural Resources (“MDNR”) and the Missouri Clean Water Commission, file this Complaint and allege as follows:

**NATURE OF THE ACTION**

1. This is a civil action for injunctive relief and civil penalties brought pursuant to Sections 309(b) and (d) of the Clean Water Act (“CWA” or “the Act” ), 33 U.S.C. § 1319(b) and (d),

against Defendant City of Lebanon, Missouri (“City of Lebanon” or “Lebanon”) for the discharge of pollutants in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311. Lebanon has violated Section 301 of the Act, 33 U.S.C. § 1311, by failing to meet the limitations and conditions contained in a National Pollutant Discharge Elimination System (“NPDES”) permit issued under Section 402(a) of the Act, 33 U.S.C. § 1342, and by discharging pollutants without NPDES permit authorization.

2. The purpose of the Act is to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The Act establishes a national goal that “the discharge of pollutants into waters of the United States be eliminated.” 33 U.S.C. § 1251(a)(1).

3. Plaintiff, State of Missouri, also brings its claims for violations of §644.051 and §644.076, RSMo 2000, of the Missouri Clean Water Law, Mo. Rev. Stat. §644.006 *et seq.* (“MCWL”).

#### **JURISDICTION AND VENUE**

4. The Court has jurisdiction of the subject matter and of the parties pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and under 28 U.S.C. §§ 1331, 1345, and 1355.

5. The United States has authority to bring this action on behalf of the Administrator of EPA (“Administrator”) under Section 506 of the CWA, 33 U.S.C. § 1366 and 28 U.S.C. §§ 516 and 519.

6. Venue is proper in the Western District of Missouri pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b), because the City of Lebanon is located in this District, and the cause of action alleged herein arose in this District.

7. As a plaintiff in this action, the State of Missouri has notice of the commencement of this action in accordance with Section 309(b) of the CWA, 33 U.S.C. §1319(b).

### **THE PARTIES**

8. Plaintiff, United States of America, is acting at the request and on behalf of the Administrator of the Environmental Protection Agency.

9. Plaintiff, State of Missouri, is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

10. The City of Lebanon is a political subdivision of the State of Missouri, and is a “municipality” as defined in Section 502(4) of the CWA, 33 U.S.C. § 1362(4) , and thus a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

11. In accordance with Section 309(e) of the Act, 33 U.S.C. § 1319(e), the State of Missouri is a plaintiff in this action.

### **CLEAN WATER ACT STATUTORY PROVISIONS**

12. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant except as authorized by, and in compliance with certain enumerated sections of the CWA, including Section 402 of the CWA, 33 U.S.C. § 1342.

13. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant,” as “any addition of any pollutant to navigable waters from any point source . . . .”

14. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines the term “pollutant” to include, among other things: sewage, sewage sludge, chemical materials, biological materials, and municipal waste.

15. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines the term “navigable waters” as “the waters of the United States, including the territorial seas.”

16. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines the term “point source” as “any discernible, confined and discrete conveyance, including, but not limited to, any ditch, channel, tunnel, conduit, well, or discrete fissure . . . from which pollutants are or may be discharged . . . .”

17. Pursuant to Section 402(a) of the CWA, 33 U.S.C. § 1342(a), the Administrator or an approved State may issue a National Pollutant Discharge Elimination System (“NPDES”) permit which authorizes the discharge of pollutants into waters of the United States, but only in compliance with the applicable requirements of section 301 of the Act, 33 U.S.C. §1311, and such other conditions as the Administrator determines are necessary to carry out the provisions of the Act.

18. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that the EPA Administrator may approve a state to administer the NPDES program within its jurisdiction. The State of Missouri has been authorized to administer the NPDES program since October 30, 1974.

19. Pursuant to Section 301 of the Act, 33 U.S.C. § 1311, and Section 402 of the Act, 33 U.S.C. § 1342, the Administrator or an approved State, in this case the State of Missouri, may specify effluent limitations in NPDES permits. “Effluent limitations” are defined by Section 502(11) of the Act, 33 U.S.C. § 1362(11), to include “restrictions on the quantity, rate, and concentration of chemical, physical, biological, and other constituents” of wastewater discharges.

20. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction,

when any person is in violation of Section 301 of the CWA, 33 U.S.C. § 1311, or is in violation of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342. To the extent that any law of the State of Missouri prevents Lebanon from raising revenues needed to comply with any judgment entered against the City of Lebanon in this action, section 309(e) of the Act, 33 U.S.C. §1319(e), provides that the State is liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment that shall be entered against Lebanon in this action.

21. Section 309(d) of the Act, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the Act, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$25,000 per day for each violation which takes place prior to January 31, 1997 and \$27,500 per day for each violation which takes place after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note; Public Law 104-134, enacted April 26, 1996; 110 Stat.1321).

#### **MISSOURI STATUTORY PROVISIONS**

22. Jeremiah W. (Jay) Nixon, is the duly elected, qualified, and acting Attorney General of Missouri. The Attorney General is authorized to institute, in the name and on behalf of the state, all civil proceedings at law or in equity necessary to protect the rights and interests of the State under § 27.060, RSMo 2000. The Missouri Clean Water Law authorizes the Attorney General's Office to bring this suit pursuant to § 644.076, RSMo 2000.

23. Section 644.051.1, RSMo 2000 of the MCWL makes it unlawful: “(1) to cause pollution of any of the waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state; (2) to discharge any water contaminants into waters of the state which reduce the quality of such waters below the water quality standards established by the commission; (3) to violate any pretreatment and toxic material control regulations, or to discharge any water contaminants into any waters of the state which exceed effluent regulations or permit provisions as established by the commission or required by any federal pollution control act....”

24. Section 644.051.2, RSMo 2000, of the MCWL makes it unlawful for any person “to build, erect, alter, replace, operate, use or maintain any water contaminant or point source” without holding a permit from the Missouri Clean Water Commission.

25. The term “discharge” is defined in § 644.016, RSMo 2000, of the MCWL as “the causing or permitting of one or more water contaminants to enter the waters of the state.”

26. The term “pollution” is defined in § 644.016, RSMo 2000, of the MCWL as, “such contamination or other alteration of the physical, chemical biological properties of waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into the waters of the state as will or is reasonably certain to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, industrial, agricultural, recreational, or other legitimate beneficial uses, or to wild animals, birds, fish or other aquatic life.”

27. The term “water contaminant” is defined in § 644.016, RSMo 2000, of the MCWL as “any particulate matter or solid matter or liquid or any gas or vapor or any combination thereof,

or any temperature change which is in or enters any waters of the state either directly or indirectly by surface runoff, by sewer, by subsurface seepage or otherwise, which causes or would cause pollution upon entering waters of the state, or which violates or exceeds any of the standards, regulations or limitations set forth in section 644.006 to 644.141 or any federal water pollution control act, or is included in the definition of pollutant in such federal act.”

28. The term “waters of the state” is defined in § 644.016, RSMo 2000, of the MCWL as, “all rivers, streams, lakes and other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased, or otherwise controlled by a single person or by two or more persons jointly or as tenants in common and includes waters of the United States lying within the state.”

29. MDNR is authorized to issue permits authorizing the discharge of pollutants into waters of the state, but only in compliance with State and federal water quality standards, effluent limitations and any conditions MDNR considers necessary to prevent a violation of MCWL.

30. Section 644.076.1, RSMo 2000, authorizes MDNR to bring an action for injunctive relief against any person who has violated any provision of MCWL or any rule, regulation, order or permit adopted or issued by MDNR thereunder.

31. Section 644.076.1, RSMo 2000, provides that a person who violates any provision of the MCWL or any rule, regulation, order or permit adopted or issued by MDNR thereunder, is subject to a civil penalty of up to \$10,000 per day for each day, or part thereof, the violation occurred and continues to occur, or both, as the court deems proper.

## **GENERAL ALLEGATIONS**

32. At all relevant times, the City of Lebanon, has owned and operated the Lebanon Municipal Wastewater Treatment Facility located in Laclede County, Missouri, as well as the associated collection system, which receives and treats wastewater from residential, commercial, and industrial sources, and discharges municipal wastewater into Dry Auglaize Creek.

33. At all relevant times, the City of Lebanon has discharged municipal wastewater from the Lebanon Municipal Wastewater Treatment Facility, which is a Publicly Owned Treatment Works ("POTW") as that term is defined in 40 C.F.R. § 122.2.

34. The municipal wastewater discharged by Lebanon has contained and continues to contain sewage, which is a "pollutant" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

35. Lebanon has discharged and continues to discharge pollutants from the Lebanon Municipal Wastewater Treatment Facility through a pipe or system of pipes, designated as Outfall 001, which constitute a "point source" as that term is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), as well as from various other points within its collection system.

36. At all relevant times, Lebanon has discharged pollutants from Outfall 001 into Dry Auglaize Creek, and thence to the Lake of the Ozarks, which are "navigable waters" of the United States as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

37. Section 402(b), 33 U.S.C. § 1342(b), of the Clean Water Act provides that the Administrator of the Environmental Protection Agency may authorize a state to administer the NPDES program within its jurisdiction.



38. Pursuant to section 402(b), 33 U.S.C. § 1342(b), the implementing regulations, 40 C.F.R. Part 123, and a Memorandum of Understanding between the U.S. EPA and the Missouri Department of Natural Resources (MDNR), dated October 30, 1974, MDNR has been authorized to administer the NPDES program in the State of Missouri.

39. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), the State of Missouri issued NPDES Permit No. MO-0089010 to the City of Lebanon, which became effective on January 10, 1992, and was revised on June 12, 1992.

40. Lebanon's NPDES permit, No. MO-0089010, expired on January 9, 1997.

41. Lebanon has not obtained a renewed NPDES permit from the State of Missouri authorizing any discharge from Outfall 001, nor has it ever received NPDES permit authorization for discharges from any other locations in its WWTP or collection system.

**FIRST CLAIM FOR RELIEF (CLEAN WATER ACT)**  
**DISCHARGES FROM OUTFALL 001 WITHOUT NPDES PERMIT AUTHORIZATION**

42. Paragraphs 1 through 41 are realleged and incorporated herein by reference.

43. From January 9, 1997 and continuing each day to the present time, Lebanon has discharged pollutants from Outfall 001, a point source, to waters of the United States without a permit in violation of section 301(a) of the Act, 33 U.S.C. § 1311. Each such discharge of pollutants from Outfall 001 constitutes a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311.

44. Lebanon has violated and will continue to violate Section 301(a) of the Act, 33 U.S.C. § 1311, by discharging pollutants into waters of the United States, unless enjoined by this Court.

**SECOND CLAIM FOR RELIEF (CLEAN WATER ACT)**  
**UNAUTHORIZED DISCHARGES FROM THE COLLECTION SYSTEM**

45. Paragraphs 1 through 44 are realleged and incorporated herein by reference.
46. NPDES Permit No. MO-0089010, issued by Missouri in 1992 and which expired on January 10, 1997, authorized the discharge of pollutants only from the discharge site designated Outfall 001.
47. From at least June 1994, Lebanon has discharged untreated sewage on at least sixty (60) separate occasions without NPDES permit authorization from point sources in its collection system, including manholes, pipes and ditches to waters of the United States.
48. Lebanon continues to discharge untreated sewage from its collection system on a routine basis. Lebanon's discharges of untreated sewage into waters of the United States have taken place, continue to take place, and will continue to take place in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), unless enjoined by this Court.
49. Each unauthorized discharge by Lebanon from its collection system constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
50. Unless enjoined by Order of this Court, Lebanon will continue to violate the Act.

**THIRD CLAIM FOR RELIEF (CLEAN WATER ACT)**  
**DISCHARGE IN VIOLATION OF NPDES PERMIT EFFLUENT LIMITATIONS**

51. Paragraphs 1 through 50 are realleged and incorporated herein by reference.
52. NPDES Permit No. MO-0089010, issued by Missouri in 1992, established effluent limitations, as that term is defined at Section 502(11) of the CWA, 33 U.S.C. §1362(11), for the discharge of pollutants from the Lebanon Municipal Wastewater Treatment Facility to Dry Auglaize Creek.

53. The 1992 NPDES permit set specific numeric effluent limitations governing daily maximum, weekly, and/or monthly average concentrations for a number of pollutant parameters, including limitations for Total Suspended Solids, BOD, Oil and Grease, Fecal Coliform, Ammonia as Nitrogen, pH, Bis (2ethylhexyl) Phthalate, and Chromium, for effluent discharged from the Lebanon Municipal Wastewater Treatment Facility into Dry Auglaize Creek.

54. The 1992 NPDES permit required Lebanon to monitor its discharges of pollutants from the Lebanon Municipal Wastewater Treatment Facility in order to determine compliance with the numeric effluent limitations established in the permit, and to submit to the Missouri Department of Natural Resources (MDNR) monthly Discharge Monitoring Reports ("DMRs") containing the results of the effluent monitoring and reporting violations of the NPDES permit.

55. From at least January 1994, and on numerous occasions thereafter, Lebanon discharged pollutants from the Lebanon Municipal Wastewater Treatment Facility in excess of the numeric effluent limitations authorized in its NPDES permit for one or more of the following parameters: Total Suspended Solids, BOD, Oil and Grease, Fecal Coliform, Ammonia as Nitrogen, pH, Bis (2ethylhexyl) Phthalate, and Chromium, all in violation of section 301 of the CWA, 33 U.S.C. § 1311.

**FOURTH CLAIM FOR RELIEF (CLEAN WATER ACT)**  
**BYPASS OF TREATMENT IN VIOLATION OF NPDES PERMIT CONDITION**

56. Paragraphs 1 through 55 are realleged and incorporated herein by reference.

57. Section I (B)(5) of the General Conditions of the NPDES permit referred to in paragraph 45 above prohibits the bypass or shut down of a wastewater treatment facility and tributary sewer

system or any part of such a facility and sewer system that results in a violation of permit limits or conditions, except under certain limited conditions.

58. From at least April of 1995, Lebanon has on numerous occasions bypassed the sand filter portion of its Wastewater Treatment Facility.

59. Lebanon's failure to comply with the prohibition of bypass condition of its NPDES permit constitutes a violation of section 301 of the Act, 33 U.S.C. §1311.

**FIFTH CLAIM FOR RELIEF (CLEAN WATER ACT)**  
**FAILURE TO MONITOR AND MAINTAIN RECORDS**

60. Paragraphs 1 through 59 are realleged and incorporated herein by reference.

61. Part I (A)(5) of the General Conditions of the NPDES Permit referred to in paragraph 43 above provides that for each measurement or sample taken pursuant to the requirements of this permit, the City of Lebanon shall record the following information: 1) date, exact place, and time of sampling or measurements; 2) the individual(s) who performed the measurements; 3) the date(s) analyses were performed; 4) the individual(s) who performed the analyses; 5) the analytical techniques or methods used; and 6) the results of such analyses.

62. Part I (A)(7) of the General Conditions of the NPDES Permit referred to in paragraph 43 above provides that the City of Lebanon shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample measurement, report or application.

63. On September 15-18, 1997, U.S. EPA Environmental Engineer Joseph Joslin performed a compliance inspection of the Lebanon Municipal Wastewater Treatment Facility. During this compliance inspection, a review was made of the records required to be maintained by Lebanon as specified by its NPDES permit. This review revealed that, up to that point, there had been numerous failures to properly monitor effluent parameters of the permit, properly record results of measurements and sampling, and maintain adequate records, all in violation of the NPDES permit. No records of Fecal Coliform analysis were available prior to August 1997. For ammonia nitrogen samples, no records were available for the date, time, and exact location of the sample, who performed the analysis, or the analytical method used. For the composite sample collected and used for BOD and total suspended solids analyses, the exact location of the collection was not defined, the date provided for sample collection could not be determined, beginning and ending sample collection times were not given, nor was there a designation of who collected the sample.

64. Each failure by Lebanon to properly record results of measurements and sampling and to maintain records of all monitoring information as required constitutes a separate violation of section 301 of the Act, 33 U.S.C. § 1311.

**SIXTH CLAIM FOR RELIEF (CLEAN WATER ACT)**  
**VIOLATION OF OPERATION AND MAINTENANCE REQUIREMENTS**

65. Paragraphs 1 through 64 are realleged and incorporated herein by reference.

66. Part I (B)(8) of the General Conditions of the NPDES permit referred to in paragraph 45 above provides that Lebanon shall at all times "operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions."

67. The City of Lebanon owns and operates the collection system that conveys sewage through a system of underground pipes and pump stations from its source to the Lebanon WWTP.

68. Lebanon has maintained the sewage collection system in a condition such that excessive amounts of groundwater and rainwater enter the sewage collection system resulting in overflows.

69. Lebanon has maintained the system such that blockages and other failures in the sewage lines have resulted in overflows from the sewage collection system.

70. From at least June 1994, Lebanon has failed to consistently operate and maintain its wastewater treatment facilities so as to comply with the Missouri Clean Water Law and the conditions of its NPDES permit. As a result of its failure to properly operate and maintain its facilities, Lebanon has routinely allowed discharges of raw sewage from the last manhole above the Lebanon Municipal Wastewater Treatment Facility into Dry Auglaize Creek and has allowed raw sewage to overflow from, inter alia, manholes, drainage ditches, basement toilets, and residential homes. Each overflow from the collection system caused by Lebanon's failure to properly operate and maintain its wastewater treatment facilities constitutes a violation of the operation and maintenance requirements of its NPDES permit.

71. Each failure by Lebanon to comply with the operation and maintenance requirements of its NPDES permit constitutes a separate violation of section 301 of the Act, 33 U.S.C. § 1311.

**SEVENTH CLAIM FOR RELIEF (CLEAN WATER ACT)**  
**FAILURE TO COMPLY WITH NPDES PERMIT REPORTING REQUIREMENTS**

72. Paragraphs 1 through 71 are realleged and incorporated herein by reference.

73. Part I (B)(2)(A) of the General Conditions of the NPDES permit referred to in paragraph 43 above provides that whenever Lebanon, for any reason, does not comply with or will be unable to comply with any daily maximum effluent limitations specified in the permit, Lebanon must provide the following information to MDNR within five (5) working days of becoming aware of such condition: i) a description of the discharge and cause of noncompliance, and (ii) the period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the noncomplying discharge.

74. Part I (B)(2)(B) of the General Conditions of the NPDES permit referred to in paragraph 43 above requires the City of Lebanon to report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time Lebanon becomes aware of the circumstances. A written submission must also be provided within 5 days of the time Lebanon becomes aware of the circumstances, unless MDNR waives the requirement for a written report where an oral report has been received within 24 hours.

75. From at least January 1994, Lebanon on numerous occasions failed to comply with the noncompliance reporting requirements of its NPDES permit by failing to give proper notice of noncompliance including effluent limit violations, unauthorized discharges from the collection system and the WWTP, and bypasses of portions of the WWTP.

76. Each failure by Lebanon to provide timely reporting of noncompliance constitutes a separate violation of section 301 of the Act, 33 U.S.C. § 1311.

**EIGHTH CLAIM FOR RELIEF (CLEAN WATER ACT)**  
**UNAUTHORIZED DISCHARGES OF SLUDGE FROM THE TREATMENT PLANT**

77. Paragraphs 1 through 76 are realleged and incorporated herein by reference.
78. On at least two occasions, April 31, 1994 and July 10, 1996, and at other times better known to the Defendant, Lebanon discharged sewage sludge from its Wastewater Treatment Facility from a point source into Dry Auglaize Creek.
79. Sewage Sludge is a pollutant as defined in section 502(6) of the Act, 33 U.S.C. § 1362(6).
80. Each discharge of sewage sludge by Lebanon from a point source into waters of the United States constitutes a separate violation of section 301 of the Act, 33 U.S.C. § 1311.

**NINTH CLAIM FOR RELIEF –**  
**PENALTIES AND INJUNCTIVE RELIEF**  
**UNDER THE MISSOURI CLEAN WATER LAW**

81. Paragraphs 1 through 80 are realleged and incorporated herein by reference.
82. At least since January 9, 1997, and continuing to the present, Lebanon has discharged pollutants and water contaminants from the Lebanon Municipal Wastewater Treatment Facility into a water of the state, the Dry Auglaize Creek, without a NPDES permit in violation of § 644.051.2, RSMo 2000 of the MCWL.
83. Since at least 1994, and continuing to the present, Lebanon has been discharging water contaminants in violation of effluent regulations in violation of § 644.051.1, RSMo 2000 and 10 CSR 20-7.015 of the MCWL.
84. Since at least 1994, and continuing to the present, Lebanon has caused pollution to a water of the state by discharging a water contaminant (including raw sewage) into the Dry



Auglaize Creek, a water of the state, in violation of the water quality standards established by MDNR in violation of § 644.051.1(2), RSMo 2000.

85. Since at least 1994, and continuing to the present, Lebanon has caused pollution of a water of the state by placing a water contaminant in a location where it is reasonably certain to cause pollution in violation of § 644.051.1(1), RSMo 2000.

86. The State of Missouri is authorized by § 644.076.1 to bring a suit for civil penalties not to exceed Ten Thousand Dollars (\$10,000.00) per day for each day, or part thereof, each violation occurred, and continued to occur, or both as the Court deems proper.

87. The unlawful acts of Lebanon are of such continuous nature and in such constant disregard for the protection of waters of the State of Missouri, that the State of Missouri believes that the Missouri Clean Water Law, Chapter 644, and applicable regulations will continue to be violated by Lebanon unless Lebanon is restrained by this Court.

88. Should Lebanon continue to pollute waters of the state, the people of the State of Missouri will be irreparably harmed and damaged in amounts incapable of being ascertained.

89. The State of Missouri has no adequate remedy at law and suit for injunctive relief is authorized pursuant to § 644.076.1.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, United States of America and the State of Missouri, respectfully request that the Court:

- (a) Enjoin Defendant, City of Lebanon, permanently from further violation of the Act;
- (b) Enjoin Defendant, City of Lebanon, from any further discharge of pollutants from its

Municipal Wastewater Treatment Facility until such time as an NPDES permit, consistent with the Act and its implementing regulations, is obtained for any such discharge;

(c) Order Defendant, City of Lebanon, to undertake and expeditiously complete all actions necessary to achieve permanent and consistent compliance with all terms and conditions of its NPDES permit and the Act;

(d) Order Lebanon to pay the United States a civil penalty of up to \$25,000 per day, for each violation of the CWA prior to January 31, 1997 and order Lebanon to pay a civil penalty of up to \$27,500 per day, for each violation of the Act after January 30, 1997;

(e) Order Lebanon to pay the State of Missouri a civil penalty in an amount up to Ten Thousand Dollars (\$10,000.00) per day, for each day, or party thereof, each violation occurred, and continued to occur, or both as the Court deems proper;

(f) Award the United States and the State of Missouri the costs and disbursements of this action; and

(g) Grant Plaintiffs United States and the State of Missouri such other relief as the Court deems appropriate.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

Dated: 3.12.04

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THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division

Dated: \_\_\_\_\_

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JOSEPH G. THEIS  
Special Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Ariel Rios Building (2243A)  
1200 Pennsylvania Ave, N.W.  
Washington, D.C. 20460  
(202) 564-4053

TODD P. GRAVES  
United States Attorney for the  
Western District of Missouri

Dated: \_\_\_\_\_

By: \_\_\_\_\_

CHARLES M. THOMAS  
Assistant United States Attorney  
Charles Evans Whittaker Courthouse  
400 E. 9<sup>th</sup> Street, 5<sup>th</sup> Floor  
Kansas City, MO 64106

FOR THE STATE OF MISSOURI

JEREMIAH W. (JAY) NIXON  
Attorney General

\_\_\_\_\_  
JOSEPH P. BINDBEUTEL  
Assistant Attorney General  
Missouri Bar No. 28656  
(573) 751-8805  
8th Floor, Broadway Building  
P.O. Box 899  
Jefferson City, MO 65102  
Fax No. (573) 751-8796

**OF COUNSEL:**

Martha Steincamp  
Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region VII  
726 Minnesota Avenue  
Kansas City, Kansas 66101

Cassandra Rice  
Attorney/Advisor  
Water Enforcement Division (2243A)  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460